

Concise Explanatory Statement
In Compliance with RCW 34.05.325(6)
Forest Practices Board

Northern Spotted Owl Habitat Conservation
August 2006

PURPOSE, CONTENT, AND ADOPTION DATE OF RULE

Since the Forest Practices Board adopted rules in 1996 to protect Northern Spotted Owl habitat, the amount of suitable habitat within Spotted Owl Special Emphasis Areas - and outside areas that are being managed under habitat conservation plans or similar agreements - has declined.

In response, the Board proposed changing the rules in two ways:

- The first is a rule change that determines when a forest practices activity is processed as a Class IV- Special forest practice. This triggers the necessity to conduct a SEPA analysis. Landowners considering a forest practice within a Spotted Owl Special Emphasis Area must determine whether a specified amount of suitable habitat would be maintained after they have harvested timber. If not, the activity has potential to cause an adverse impact and their proposal would require SEPA environmental review.

WAC 222-10-041(4)(b) allows landowners to include in their suitable habitat calculation, land that has been harvested under an adjacent landowner's habitat conservation plan. The Board proposed discontinuing that provision. Once adopted, landowners would not be able to count as suitable spotted owl habitat, land that has been harvested under an adjacent landowner's habitat plan.

- The second is a rule change that addresses the decertification of spotted owl site centers. With this amendment the Board would place a moratorium on the decertification of Northern Spotted Owl site centers until June 30, 2007, when there is more information from the federal recovery planning being developed in 2006 and early 2007. This rule change inserts language to that effect in WAC 222-16-010, in the definition of "northern spotted owl site center."

The Forest Practices Board adopted the rule on August 9, 2006; the rule will be effective in September, 2006.

PROPOSED RULE CHANGES

<p>WAC 222-10-041(4)(b)</p>	<p>WAC 222-10-041 Northern spotted owls. The following policies shall apply to forest practices subject to SEPA if the forest practices may cause adverse impacts to northern spotted owls. ... (4) Within SOSEAs, the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of the owl(s) associated with each northern spotted owl site center, in the absence of more specific data or a mitigation plan, as provided for in subsections (6) and (7) of this section respectively: (a) All suitable spotted owl habitat within 0.7 mile of each northern spotted owl site center; (b) Including the suitable spotted owl habitat identified in (a) of this subsection: (i) For the Hoh-Clearwater/Coastal Link SOSEA - A total of 5,863 acres of suitable spotted owl habitat within the median home range circle (2.7 mile radius). (ii) For all other SOSEAs - A total of 2,605 acres of suitable spotted owl habitat within the median home range circle (1.8 mile radius). The department shall first identify the highest quality suitable spotted owl habitat for this purpose. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable habitat. Suitable spotted owl habitat identified outside 0.7 mile of a northern spotted owl site center may support more than one median home range circle. Suitable spotted owl habitat harvested by a landowner shall continue to be counted as part of the total acres necessary under (b) of this subsection for other landowners within the median home range circle if the harvest is conducted pursuant to agreements or plans approved under subsection (6) of this section or WAC 222-16-080 (1)(h)(iv), (6)(a)(iv), or (f).</p>
<p>WAC 222-16-010 General definitions.</p>	<p>"Northern spotted owl site center" means: (1) <u>Until June 30, 2007, the location of northern spotted owls:</u> (a) <u>Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or</u> (b) <u>Newly discovered, and recorded by the</u></p>

	<p><u>department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.</u></p> <p>(2) <u>After June 30, 2007, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:</u></p> <p>Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.</p> <p>Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.</p> <p>Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).</p> <p>In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.</p> <p>...</p>
--	---

DIFFERENCES BETWEEN PROPOSED AND FINAL RULE

The final rule is substantially the same as the proposal distributed for public review. The only changes are a minor grammatical edit and a minor punctuation edit in the definition of "Northern spotted owl site center" to add clarity:

In subsection (1)(a), replace "on" with "as of" to specify all owl site centers recorded before and on November 1, 2005.

In subsection (1)(b), add a comma to clarify that new site centers are not discovered by WDFW.

"Northern spotted owl site center" means:

(1) Until June 30, 2007, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 ~~on~~ as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

SUMMARY OF PUBLIC INVOLVEMENT OPPORTUNITIES FOR PERMANENT RULE

9/7/05	Preproposal Statement of Inquiry (CR-101) published in the Washington State Register.
2/13/06- 3/14/06	Thirty-day review of draft language by counties, WDFW (per RCW 76.09.040(2)), and tribes.

4/5/06	Proposed Rule Making (CR-102) published in Washington State Register.
5/18/06	News release with information on public hearings
5/11/06	Distribution of the SEPA checklist and threshold determination
5/25/06	Public hearing, Kelso
6/1/06	Public hearing, Forks
6/6/06	Public hearing, Yakima
6/8/06	Public hearing, Mt. Vernon
6/9/06	Due date for public comments

SUMMARY OF PUBLIC COMMENT

The Board received 140 oral and written comments, which are summarized below and responded to in the following section, "Responses to Comments – By Subject Matter." In addition, twelve comments were received after the deadline, consisting of the same or similar comments to those summarized below.

In support of proposed rules.

Four (4) comments indicated support for the proposal as written.

One hundred twelve (112) commenters, most of which represented or are affiliated with the Audubon Society, expressed support for rules protecting Northern Spotted Owl habitat, but said the proposal does not go far enough toward habitat protection.

All of them included these suggestions for increased habitat protection:

- Permanently discontinuing the provision of decertification of Northern Spotted Owl sites to allow for re-establishing populations.
- Discontinuing any permitting of harvest in habitat on state and private land until federal and state recovery plans are developed and implemented.

A majority stressed the Board should implement long-term wildlife protection strategies including establishing long-term plans, timelines, staffing and funding plans to revise upland wildlife rules.

One suggested a specific grammatical change to the proposal: In WAC 222-16-010(1)(a), replace "on" with "as of" to indicate all owl site centers recorded before and on November 1, 2005.

Six suggested that the Board develop incentives for landowners to protect and restore old forest habitat. One asked the Board to consider stopping harvest permitting in the Teanaway and use it as a test area for owl recovery. One suggested stopping permitting logging of spotted owl habitat below the 40% federal limit, identify lands that have been cut below that limit, and begin rule changes and a land acquisition strategy. Another commenter suggested adopting the FSC (Forest Stewardship Council) standards for all of Washington's forests.

In support of stricter regulation of forest practices for wildlife protection.

Several commenters called for sustainable logging practices; several appealed for an end to the logging of old growth forests. One commenter suggested no forest road construction or timber harvest if water quality or threatened and endangered species could be adversely affected. One commenter attested to the importance of connectivity for the migration of wildlife species, and several expressed the concept of the Northern Spotted Owl species as an indicator of forest health in Washington.

Not in support of proposed rules.

Eight commenters expressed that they are not in support of, or are wary about, the proposed rules:

Washington Forest Protection Association (WFPA) said placing further restrictions on timber harvest from private lands will not arrest the owl's declining population. It also stated a commitment to 1) working toward implementing landscape management planning in a manner that enhances benefits to landowners and removes disincentives to do so, and 2) contributing to a collaborative wildlife workplan with a comprehensive landscape level assessment as its backbone.

A small forest landowner expressed concern about whether the rules would affect the process and cost of harvesting timber on his property.

Another small forest landowner of 640 acres within the Eastern Washington SOSEA explained that the timber on that property is the only merchantable timber that his company owns. He fears that the proposed rules will result in taking all of the property's investment value.

A representative from the Washington Farm Bureau asked the Board to weigh carefully the fiscal impacts to landowners, and mentioned that the current rules have not resulted in recovery, yet the fiscal impacts and loss of management control has been considerable.

A representative from Rayonier said additional state rules won't help the decline of the Northern Spotted Owl in the area of the Hoh-Clearwater SOSEA and the Olympic National Forest and National Park -- all efforts are negated by the Barred owl.

A representative from NOTAC (North Olympic Timber Action Committee) expressed concern about costs of delaying decertification of owl circles and the potential for further delays past June 2007.

The Mayor of Forks asked the Board not to forget the human impacts of regulatory changes.

Forks' City Attorney expressed opposition to the postponement of decertification until June 2007 because of the major economic impact to the area.

Comment not pertaining to the rule proposal

One commenter advocated for more effective enforcement of wildlife protection in land development projects.

RESPONSES TO COMMENTS – BY SUBJECT MATTER

Language clarification

- COMMENT Suggestion to replace "on" with "as of" in WAC 222-16-010(1)(a), to clarify intent.
- RESPONSE *We are incorporating this suggestion in the rule.*

Decertification

- COMMENT Suggestion to permanently discontinue the provision of decertification of Northern Spotted Owl sites to allow for re-establishing populations.
- RESPONSE *The Forest Practices Board will consider the role of decertification, if any, once the federal recovery plan is available.*
- COMMENT Concern about potential for extending the moratorium on decertification past June 2007.
- RESPONSE *The Forest Practices Board will consider the role of decertification, if any, once the federal recovery plan is available.*

Permitting of timber harvests in habitat

- COMMENT Discontinue any permitting of timber harvests in habitat on state and private land until federal and state recovery plans are developed and implemented.
- RESPONSE *The Forest Practices Board considered this course of action and decided to continue permitting harvests subject to the forest practices rules while the federal recovery plan is being developed.*
- COMMENT Stop permitted logging of old growth forests.
- RESPONSE *The Forest Practices Board will re-evaluate habitat protection strategies when guidance is available through the federal recovery plan.*
- COMMENT Stop permitting logging of spotted owl habitat below the 40% federal limit, identify lands that have been cut below that limit, and begin rule changes and a land acquisition strategy.
- RESPONSE *The Forest Practices rules currently prohibit logging below 40% habitat at spotted owl sites within Spotted Owl Special Emphasis Areas. The Forest Practices Board will re-evaluate habitat protection strategies when guidance is available through the federal recovery plan.*
- COMMENT Ensure sustainable logging practices.
- RESPONSE *The intent of the forest practices rules is to ensure that logging does not result in damage to public resources, and that successful reforestation occurs following logging.*
- COMMENT Do not permit forest road construction or timber harvest if water quality or threatened and endangered species could be adversely affected.
- RESPONSE *The intent of the forest practices rules is to ensure that no forest practice damages public resources, including water quality, fish, and wildlife.*
- COMMENT Consider not permitting timber harvest in the Teanaway and using this area as a test for owl recovery.
- RESPONSE *The Forest Practices Board will re-evaluate habitat protection strategies when guidance is available through the federal recovery plan.*

Habitat protection strategies

- COMMENT Implement long-term wildlife protection strategies including establishing long-term plans, timelines, staffing and funding plans to revise upland wildlife rules.
- RESPONSE *This process has already begun. The Forest Practices Board has sponsored research to assess landscape level wildlife habitat relationships. The Department of Fish and Wildlife is implementing the first year of this research. Funding has been provided to allow small forest landowners, Indian tribes, and the TFW Conservation Caucus to participate in this collaborative study.*
- COMMENT Provide connectivity for the migration of wildlife species.
- RESPONSE *The landscape level habitat assessment described above will evaluate the need for connectivity in managed landscapes.*
- COMMENT Work collaboratively on a wildlife work plan with a comprehensive landscape level assessment as its backbone.
- RESPONSE *This work has begun (see above).*
- COMMENT Work toward implementing landscape management planning in a manner that enhances benefits to landowners and removes disincentives to do so.
- RESPONSE *The Forest Practices Board has directed the Department of Natural Resources to work with forest practices stakeholders to identify incentives, and suggest ways for removing disincentives, to encourage landscape management planning by forest landowners. Also, the Department of Fish and Wildlife has taken a leadership role in identifying potential incentives.*
- COMMENT Adopt the FSC (Forest Stewardship Council) standards for all of Washington's forests.
- RESPONSE *This recommendation is being forwarded to the Forest Practices Board.*

Effect of amended rules on landowners and communities

- COMMENT How will the new rules affect landowners' management options?
- RESPONSE *One of the rule changes is in WAC 222-10-041(4)(b). It affects forest lands within a Spotted Owl Special Emphasis Area (SOSEA) and affects whether a forest practices proposal would require SEPA environmental review. (SOSEAs are geographic areas; maps of SOSEAs are shown in WAC 222-16-086.) Forest practices applicants must determine whether a specified amount of suitable habitat would be maintained after their proposed timber harvest (see the WAC for those specified acreages of suitable habitat). If not, the activity has potential to adversely impact the Northern Spotted Owl species, and the proposal requires SEPA environmental review. With the rule change, landowners will no longer be able to count as suitable spotted owl habitat, land that has been harvested under an adjacent landowner's approved habitat conservation plan, or because the neighbor qualified for the "500 acre exemption." (This rule does not apply to landowners who own less than or equal to 500 acres, and their proposals are not within 0.7 mile of a northern spotted owl site center – see WAC 222-16-080 (h)(iv).)*
- The second is an amendment to WAC 222-16-010, in the definition of "northern spotted owl site center." This rule change effectively eliminates the possibility of the decertification of site centers until June 30, 2007. Therefore, any landowner that wanted a site center to be decertified before that date would be impacted.*

COMMENT Consider carefully the human impacts of regulatory changes.
RESPONSE *The Forest Practices Board has considered the estimated costs associated with this rule making through a cost-benefit analysis and a small business economic impact statement. These analyses are combined in a document entitled, Economic Analysis, Forest practices Rule Making Affecting Northern Spotted Owl Conservation. (This document is available at <http://www.wadnr.gov:81/forestpractices/rules/activity/> or upon request by contacting the Board's rules coordinator at (360) 902-1400.)*

COMMENT All efforts to help the Northern Spotted Owl population decline in the Hoh-Clearwater SOSEA and Olympic National Forest and National Park have been negated by the presence of the Barred Owl.
RESPONSE *The relationship between declining spotted owl populations and increasing Barred Owl populations will be addressed in the federal spotted owl recovery plan.*

Other

COMMENT There should be more effective enforcement of wildlife protection in land development projects.
RESPONSE *The Department of Natural Resources enforces all forest practices rules that provide for wildlife habitat protection. Following timber harvesting, subsequent land development activities are outside of the department's jurisdiction.*

Prepared by Gretchen Robinson, July 2006.